REMARKS

In the Final Office Action[1] dated July 31, 2007, the Examiner: (1) rejected claims 1-6, 8, 9, 14-41, 43, 44, 49-76, 78, 79, 84-105, 112, and 113 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,055,573 to Gardenswartz ("*Gardenswartz*") in view of U.S. Patent No. 5,970,469 to Scroggie ("*Scroggie*"); (2) rejected claims 10-13, 45-48, and 80-83 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Gardenswartz* in view of *Scroggie*, and further in view of U.S. Patent No. 5,960,409 to Wexler ("*Wexler*"); and (3) rejected claims 106-111 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Gardenswartz* in view of *Scroggie* and further in view of U.S. Patent No. 5,945,653 to Walker ("*Walker*").

No claims have been amended in this response. Claims 7, 42 and 77 were previously canceled. Claims 1-6, 8-41, 43-76, and 78-113 are currently pending. For at least the reasons set forth below, Applicant respectfully traverses the rejections under 35 U.S.C. § 103(a) and request the timely allowance of the pending claims.

I. Rejection under 35 U.S.C. § 103(a) based on *Gardenswartz* and *Scroggie*

The Examiner rejected claims 1-6, 8-9, 14-41, 43-44, 49-76, 78-79, 84-105, 112 and 113 as being allegedly unpatentable under 35 U.S.C. § 103(a) over *Gardenswartz* in view of *Scroggie*.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), each of the three requirements must be met. First, the references, taken alone or combined, must teach or suggest each and every element recited in the claims. (M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006).) Second, there must be some suggestion or motivation,

either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. (*Id.* at § 2143.01.) Third, a reasonable expectation of success must exist that the proposed modification will work for the intended purpose. (*Id.* at § 2143.02.) Moreover, each of these requirements must "be found in the prior art, and not be based on applicant's disclosure." (*Id.* at § 2143.)

Applicant respectfully traverses the 35 U.S.C. § 103(a) rejection of claims 1-6, 8, 9, 14-41, 43, 44, 49-76, 78, 79, 84-105, 112, and 113, because no *prima facie* case of obviousness has been established. For example, as explained below, *Gardenswartz* and *Scroggie*, taken either alone or in combination, fail to disclose or suggest every claim element.

To begin with, the Examiner argues that Applicant's specification describes attributes that are based on cusumer purchase behavior, and thus *Gardenswartz*'s promotional incentives teach "determining attributes of consumers." (Final OA at 16.) The Examiner mischaracterizes Applicant's arguments set forth in the response filed June 22, 2007. As explained, *Gardenswartz* merely discloses promotional incentives that may be based on a behavior of a consumer. These incentives are not attributes of a first group of consumers, as recited in, for example, claim 1. Indeed, the incentives disclosed by *Gardenswartz* may be what is provided to a consumer to invite participation in a market product. Applicant's claimed attributes, and the step of "determining attributes of a first group of consumers," as recited in Applicant's claims

[1]The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

include financial information or loyalty information, as recited in Applicant's claims. This is different from promotional incentives that may not be delivered.

Further, contrary to the Examiner's assertions, *Gardenswartz* does not teach or suggest at least the following recitations of claim 1:

> determining attributes of a second group of consumers in the market population of consumers who have not purchased the item;
>
> determining differences between the first group of consumers and the second group of consumers to identify attributes of consumers exhibiting a particular buying behavior.

To address the above listed recitations, the Examiner relies on column 15, lines 1-40 of *Gardenswartz*. However, this portion of the reference merely describes a value contract and how it may be implemented based on offline purchase history. Column 15, lines 1-40 of *Gardenswartz*, nor any other portion, teach or suggest "determining attributes of a second group of consumers in the market population of consumers who have not purchased the item," as recited in claim 1. Indeed, *Gardenswartz* does not even disclose "consumers who have not purchased the item." Accordingly, for at least these reasons, *Gardenswartz* does not teach or suggest each and every recitation of claim 1.

In addition, since *Gardenswartz* fails to teach or suggest "determining attributes of a second group of consumers," the reference is also deficient in disclosing "determining differences between the first group of consumers and the second group of consumers to identify attributes of consumers exhibiting a particular buying behavior," as recited in claim 1. In fact, *Gardenswartz* fails to teach using differences between two

different groups of consumers to identify attributes of consumers. For this additional reason, *Gardenswartz* does not teach or suggest each and every recitation of claim 1.

Moreover, *Scroggie*, which the Examiner cites only to allegedly disclose "a system that transmits back to customers a plurality of incentive offers based upon said customer geographic region or zone," fails to remedy the deficiencies of *Gardenswartz* set forth above. Therefore, the Examiner failed to establish a *prima facie* case of obviousness with respect to claim 1. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of claim 1, and allowance of the claim.

Independent claims 36, 71, and 112, although of different scope, recite features similar to those of claim 1. For at least the same reasons set forth above in connection with claim 1, Applicant respectfully submits that *Gardenswartz* and *Scroggie*, taken either alone or in combination, fails to teach or suggest every claim element of independent claims 36, 71, and 112. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of these claims, and allowance of these claims.

Claims 2-6, 8-9 and 14-35 depend from independent claim 1. Claims 37-41, 43, 44, and 49-70 depend from independent claim 36. Claims 72-76, 78, 79, and 84-105 depend from independent claim 71. Claim 113 depends from independent claim 112. Thus, the dependent claims are allowable at least by virtue of their dependence on allowable independent claims 1, 36, 71, or 112. In addition, each of the dependent claims include recitations that are neither taught nor suggested by the cited art. Therefore, Accordingly, Applicant respectfully requests reconsideration and withdrawal

of the § 103(a) rejection of claims 2-6, 8-9, 14-35, 37-41, 43, 44, 49-70, 72-76, 78, 79, 84-105, and 113, and allowance of these claims.

II. Other Rejections under 35 U.S.C. § 103(a)

Wexler and *Walker* also fail to teach or suggest at least the above-identified recitations of dependent claims 10-13, 45-48, 80-83, and 106-111. For example, the Examiner cites *Wexler* to allegedly disclose "a system that allows advertisers to compare the effectiveness of each of the publishing sites that advertises said advertisers' promotions." Further, the Examiner relies on *Walker* to allegedly disclose "providing a coupon with monthly credit card statement." Therefore, *Wexler* and *Walker*, alone or in combination with the cited art, do not overcome the above-noted deficiencies of *Gardenswartz* or *Scroggie*.

Accordingly, the cited art fails to support the rejection of dependent claims 10-13, 45-48, 80-83, and 106-111 under 35 U.S.C. § 103(a) for at least the same reasons set forth above for their respective independent claims. In addition, each of these dependent claims recites unique combinations that are neither taught nor suggested by the cited art. Therefore, Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of claims 10-13, 45-48, 80-83, and 106-111, and allowance of these claims.

II. Conclusion

In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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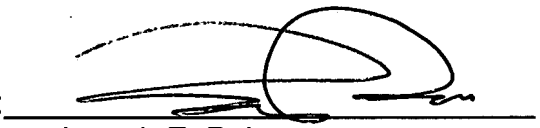
By: 

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